Union Calendar No. 594

106th Congress, 2d Session – – – – – – – – – – – – House Report 106–1024

MANAGEMENT PRACTICES AT THE OFFICE OF WORKERS' COMPENSATION PROGRAMS U.S. DEPARTMENT OF LABOR

NINTH REPORT

BY THE

COMMITTEE ON GOVERNMENT REFORM

together with

ADDITIONAL VIEWS

Available via the World Wide Web: http://www.gpo.gov/congress/house
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DECEMBER 4, 2000.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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LETTER OF TRANSMITTAL

HOUSE OF REPRESENTATIVES,
Washington, DC, December 4, 2000.

Hon. J. DENNIS HASTERT,
Speaker of the House of Representatives,
Washington, DC.

DEAR MR. SPEAKER: By direction of the Committee on Government Reform, I submit herewith the committee's ninth report to the 106th Congress. The committee's report is based on a study conducted by its Subcommittee on Government Management, Information, and Technology.

DAN BURTON,
Chairman.

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106TH CONGRESS, *2d Session* } HOUSE OF REPRESENTATIVES { REPORT 106–1024

MANAGEMENT PRACTICES AT THE OFFICE OF WORKERS' COMPENSATION PROGRAMS U.S. DEPARTMENT OF LABOR

DECEMBER 4, 2000.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. BURTON, from the Committee on Government Reform submitted the following

NINTH REPORT

On October 19, 2000, the Committee on Government Reform approved and adopted a report entitled, "Management Practices at the Office of Workers' Compensation Programs U.S. Department of Labor." The chairman was directed to transmit a copy to the Speaker of the House.

SUMMARY OF OVERSIGHT FINDINGS AND RECOMMENDATIONS

INTRODUCTION

JURISDICTION

The Committee on Government Reform ("committee") has primary legislative and oversight jurisdiction with respect to "Government management generally," as well as "overall economy, efficiency, and management of Government operations and activities."[1] The committee also has the responsibility:

> [T]o determine whether laws and programs addressing subjects within the jurisdiction of [the] committee are being implemented and carried out in accordance with the intent of Congress [through the] review and study on a continuing basis the application, administration, execution, and effectiveness of laws and programs addressing subjects within its jurisdiction. [The committee shall review and study] any conditions or circumstances that may indicate the necessity or desirability of enacting new or additional legislation addressing subjects within its jurisdiction.[2]

[1] Clause 1(h) (4) and (6) Rule X of the Rules of the House of Representatives, 106th Cong.
[2] Id., Clause 2(b)(1) (A) and (C).

Pursuant to this authority, the Subcommittee on Government Management, Information, and Technology ("subcommittee") convened various oversight hearings to explore: Management Practices at the Office of Workers' Compensation Programs, U.S. Department of Labor.

I. FINDINGS

The committee found the following areas to be of primary concern within the Office of Workers' Compensation Programs:

- Those responsible for the administration of the Federal Employees' Compensation Act at the Office of Workers' Compensations Programs within the Department of Labor are not providing adequate information or services to claimants who file appeals;
- Management practices of the Office of Workers' Compensation Programs at the Department of Labor are not focused on customer service;
- Federal agencies are not providing adequate assistance to their injured Federal workers; and
- Actions are needed to improve management practices and customer service in the Office of Workers' Compensations Programs at the Division of Federal Employees' Compensation, Department of Labor and at employing Federal agencies.

II. SUMMARY OF INVESTIGATION

Since 1998, the Subcommittee on Government Management, Information, and Technology has held three investigative hearings and interviewed hundreds of people on the Government's process of compensating Federal employees who are injured while fulfilling their work-related duties.[3]

Although the Office of Workers' Compensation Programs [OWCP] has undergone some changes to enhance customer service, injured workers, their union representatives, attorneys and physicians say the problems remain largely unchanged.

III. BACKGROUND

The OWCP is responsible for adjudicating and administering claims of work-related injuries and illnesses as authorized by the Federal Employees' Compensation Act [FECA].[4] The FECA program covers nearly 3 million active duty civilian Federal employees, providing benefits to those it determines sustain an injury or illness in the performance of their duties. During fiscal year 1999, FECA's costs totaled about $1.9 billion in compensation, medical, and death benefits. Federal employees filed about 167,000 injury notices last year. And at the end of fiscal year 1999, the OWCP was administering about 243,000 ongoing injury cases for partial or total disability, including those from previous years. OWCP officials say they receive an estimated 2.6 million phone calls and 5.5

[3] Subcommittee on Government Management, Information, and Technology: "Oversight of the Management Practices at the Office of Workers' Compensation Programs," 105th Cong., 2d sess., Serial No. 105–200 (July 6, 1998); "Oversight of Customer Service at the Office of Workers' Compensation Programs," 106th Cong., 1st sess., Serial No. 106–87 (May 18, 1999); "Federal Workers' Compensation Program: Are Injured Federal Workers Being Treated Fairly?," 106th Cong., 2d sess. (Sept. 21, 2000).

[4] 5 U.S.C. § 8101, et seq., as amended.

million pieces of mail each year from claimants, medical providers, agencies and others.

Disputes under the FECA are resolved through informal conferences or formal reconsideration at the district office level, through administrative hearings, or review by the independent Employees' Compensation Appeals Board whose decision is final.

IV. Areas of Concern

A. Fairness of the non-adversarial system to claimants;

B. Delays in the claim adjudication process;

C. Accountability of the Office of Workers' Compensation Programs;

D. Poor Customer Service at the Office of Workers' Compensation Programs.

V. Recommendations

A. Provisions of the Federal Employees' Compensation Act must be enforced, specifically those provisions dealing with employers who interfere with an employee's legitimate claim for compensation due to a work-related injury or illness.

B. Provisions in the Federal Employees' Compensation Act must be clarified to require a third opinion by a qualified physician when an employee's attending physician and an OWCP physician disagree on the diagnosis or prognosis of a work-related injury or disease.

C. The Division of Federal Employees' Compensation within the Department of Labor should make every effort to provide telephone access to FECA claimants, their representatives and medical providers. This effort should include a centralized communications center.

D. While timeframes must be set for claim resolutions, they must not be at the expense of a quality, well-thought-out decision.

E. Congress should consider establishing an independent board, such as the board overseeing ongoing reforms at the Internal Revenue Service, to review, make recommendations, and oversee reforms at the Office of Workers' Compensation Programs. This board should also consider and recommend to Congress whether appeals by Federal workers under the Office of Workers' Compensation Programs should be extended to include the Federal court system.

VI. Subcommittee Investigation

Over the last 3 years, the Subcommittee on Government Management, Information, and Technology and numerous congressional offices have received hundreds of complaints about the OWCP and the manner in which it handles the Federal Workers' Compensation Programs.

In addition to receiving these complaints, many of which were substantiated by documentation, the subcommittee has conducted oversight, including three hearings on the subject under the chairmanship of Representative Stephen Horn (R–CA). Based on this oversight, the subcommittee found the following:

A. FAIRNESS OF THE NON-ADVERSARIAL SYSTEM TO CLAIMANTS

The subcommittee held its first hearing on the "Oversight of the Management Practices at the Office of Workers' Compensation Programs" on July 6, 1998 in Long Beach, CA.[5]

During that hearing, Mr. Joseph Perez who, at the time, was a hearing representative for the OWCP testified that the original intent of the Federal Employees' Compensation Act was to create a non-adversarial, or non-litigious, system that would provide employers with a predictable future liability that they could incorporate into their overhead. The act was also intended to provide Federal employees who are injured during the course of their employment with swift, sure benefit recovery without the necessity of litigation.

Mr. Perez went on to state: "As long as both parties receive the results of that covenant, they are satisfied. However, I believe that justice is not being done to Federal employees. And the testament to that fact is the enormous number of complaints which have arisen regarding this system."

Despite materials presented by the OWCP that indicate the program is approving most cases and making timely decisions, Mr. Perez said: "I suggest that the facts indicate that these statements are not true. In fact, benefits are not swiftly provided . . . I maintain that the proceedings are adversarial in nature."

Mr. Perez said that the number of hearing requests had risen dramatically over the previous 9 years because of the poor quality of decisions by OWCP claims examiners, who generally deny claims. Among the increased number of case hearings, 45 percent were remanded, or ordered to be reviewed by a second examiner or hearing officer, Mr. Perez stated. Among those cases that reached the Employees Compensation Appeals Board [ECAB]—the system's final appeals board—41 percent were sent back to the OWCP for review, Mr. Perez stated. However, later testimony by ECAB Chairman Michael J. Walsh on September 21, 2000, stated that the percentage of the ECAB's remanded cases was currently 25 percent.

Mr. Perez indicated during his testimony that there were several factors involved in the claim denials, including the Division of Federal Employees Compensation's efforts to lower costs to Federal departments and agencies by reducing the number of lost production days due to on-the-job injuries.

Mr. Perez stated:

> The Division of Federal Employees Compensation has set yearly goals for reducing the number of lost production days between now [1998] and fiscal year 2002. . . . [T]hat is a fine goal, and I believe that injured employees should be brought back to work as soon as medically suitable. But when the No. 1 goal for the agency is to reduce the number of lost production days, I am sure you can see that this is susceptible to abuse and quotas . . . [S]ince the introduction of Quality Case Management Procedures and early nurse interventions, as I mentioned earlier, there has been

[5] "Oversight of the Management Practices at the Office of Workers' Compensation Programs," 105th Cong., 2d sess. (1998).

> a 22 percent increase in hearing requests. There seems to be a correlation between these techniques for getting people back to work and their dissatisfaction with the decisions. . . . [T]hese individuals have legitimate claims, and when they reach an appellate level, their case is being approved. . . . I maintain, Mr. Chairman, that these aggressive procedures to reduce the number of lost production days are forcing legitimately disabled employees back to work in inappropriate jobs.[6]

Other witnesses have substantiated Mr. Perez's claims. During the July 6, 1998, hearing Mr. Sammy Lopez, a supply technician at the Veterans Administration Hospital in Long Beach, CA, testified that in 1994 he sustained a work-related injury to his left ankle, neck and head that left him with permanent pain.[7]

Mr. Lopez testified that:

> At every step of the process, I was met with resistance from my employing agency and [the] Federal agency responsible for safeguarding my FECA rights, the Office of Workers' Compensation Programs.
>
> Three months after my injury, I was advised that the employing agency, [VA's OWCP manager] Arline Rubin, directed medical staff personnel to alter the physician's orders that had placed me off work, and instead provide light duty status. This caused unnecessary aggravation and stress and interfered with my relationship with my supervisor at work and my physician.

Overall, Mr. Lopez said, "Her [Arline Rubin's] zealous approach as a VA OWCP manager was never in the interest of the injured employee. She did everything in her power to interfere with my ability to convalesce, obtain compensation, and obtain the appropriate medical surgery."

Mr. Lopez ultimately received the necessary surgery on July 30, 1996, 26 months after the date of injury. He later returned to the VA hospital as a union representative.

Witnesses at each of the subcommittee's three hearings[8] also said they believed that the physicians who rendered the second professional opinions in their cases were biased toward denying their claims. Few, if any, had been seen by an arbitrating third physician, which under most programs would be required when there are conflicting medical opinions.

In addition, Mr. Perez stated that when enacted in 1916, the Federal Employees' Compensation Act read as follows:

> [T]hat in case of any disagreement between the physician making an examination on the part of the United States and the employee's physician the commission shall appoint a third physician, duly qualified, who shall make an examination.[9]

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[6] Id. Testimony of Joseph Perez.
[7] Id. Testimony of Sammy Lopez.
[8] In addition to the July 6, 1998 hearing, the Subcommittee on Government Management, Information, and Technology held hearings on May 18, 1999, and Sept. 21, 2000.
[9] 39 Stat. 747 § 22 (codified at 5 U.S.C. § 771).

Mr. Perez maintains that the language of the original law was not substantively altered by the 1996 changes in the act.[10] Nevertheless, Mr. Perez said, "despite this clear statutory mandate, the OWCP Procedural Manual contains the following instructions":

> [t]he findings or opinions of [the second opinion physician] will often differ from those of the claimant's attending physician. If of equal weight, the differing opinions would constitute a conflict requiring referral to a third physician. This is a time-consuming process which is not always necessary. Frequently a decision can be reached by weighing the medical evidence of record without referral to a referee specialist.[11]

Another problem, according to Mr. Perez's prepared statement on July 6, 1998, and confirmed by Attorney James Linehan at the subcommittee's hearing on May 18, 1999,[12] is that in most courts of law, the "attending physician rule" prevails, but not at the OWCP. Mr. Linehan stated:

> Under most circumstances in courts of law or otherwise, the attending physician rule prevails. This rule is quite simple. In a contest between the injured claimant's qualified attending medical physician and an agency's non-attending consultative examiner regarding medical treatment, the qualified medical recommendations and reports of the attending physician prevail and take precedence over the paid consultant. The U.S. Federal Court of Appeals and the U.S. Social Security Administration recognize that the "attending physician rule" was developed because such an opinion "reflects an expert judgment based on a continuing observation of the patient's condition over a prolonged period of time."[13]

However, Mr. Linehan said,

> [t]he exact opposite holds true in OWCP claims. 5 U.S.C. § 8123 states that when there is a conflict in medical evidence of equal weight, the opinion of the hired medical consultant of the OWCP prevails over that of the claimant's attending physician. The detailed medical treatment reports of a Federal employee's attending physician are considered less qualified than the medical report of a non-examining physician retained and paid by OWCP. This occurs despite the fact that the employee's attending physician's expert judgment reflects the continuing observation of the patient's condition over a prolonged period of time. With total unilateral control by the OWCP over the medical treatment of the Federal employee, it is in the best interest of OWCP *not* to recognize the attending physician rule. The OWCP, with unilateral control over its choice of the prevailing medical report needs only to "shop around"

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[10] 5 U.S.C. § 8123(a).

[11] FECA Procedural Manual, (chs. 2–810.9h) Office of Workers' Compensation Programs, U.S. Department of Labor.

[12] "Oversight of Customer Service at the Office of Workers' Compensation Programs," 106th Cong., 1st sess., Serial No. 106–87 (May 18, 1999).

[13] *Foster* v. *Heckler,* 780 F.2d 1125, 1130 (4th Cir. 1986) (quoting *Mitchell* v. *Schweiker,* 699 F. 2d 185, 187 (4th Cir. 1983)).

> for a paid consultant to state any medical diagnosis the OWCP so desires. With such unilateral control over the claimant's own attending physician, the OWCP has no incentive to act in the best interest of the Federal employee.

However, in a July 26, 1999 letter responding to followup questions from the subcommittee's ranking member, Jim Turner (D–TX), the OWCP Deputy Director, Shelby Hallmark, stated:

> The policy followed by OWCP and the ECAB in weighing the opinion of a treating physician is consistent with the approach taken by administrators of other benefit programs such as the Social Security Administration. The "attending physician rule" is nothing more than a jurisprudential principle regarding the weight to be given to particular medical evidence. While the rule is, in fact, based in part upon the treating physician's "continuing observation of the patient's condition over a prolonged period of time," the SSA, by regulation, gives controlling weight to the opinion of a treating physician only if it is "well-supported by medically acceptable clinical and substantial evidence in (the) record."

B. DELAYS IN THE CLAIMS ADJUDICATION PROCESS

Nearly all witnesses stated that they had to wait months or years for the adjudication of their claims. Claimants are given 30 days to request a hearing if they choose to refute the OWCP's disposition of their case. However, witnesses testified that it can take as long as 2 years before the hearing occurs. And if a claim is remanded (returned to OWCP for further examination), that review process can take another 23 months. If claimants seek a final appeal through the Employees Compensation Appeals Board [ECAB], which is independent of the OWCP but reports to the Secretary of Labor, the process can take an additional 2 years.

At the subcommittee's third hearing on September 21, 2000,[14] Michael J. Walsh, of the Employees' Compensation Appeals Board [ECAB] stated that about 25 percent of the cases that are appealed to the ECAB are reversed, or sent back to OWCP for review, because of a factual or legal error, or because the case needs further development. "Our role is to review whether they've correctly looked at the facts and correctly looked at the law. If we disagree on either of those issues . . . that would be a basis for sending it back," Mr. Walsh said.

C. ACCOUNTABILITY OF THE OFFICE OF WORKERS' COMPENSATION PROGRAMS

Mr. Linehan stated that the one overriding concern common to all areas of the OWCP claims handling process, is the OWCP's lack of accountability to any overseer. Mr. Linehan stated that the OWCP is essentially a self-governing, self-regulating Federal agency that answers to no court of law, which has resulted in a Federal agency that is not required to answer or account for its actions (or lack of action).

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[14] "Federal Workers' Compensation Program: Are Injured Federal Workers Being Treated Fairly?," 106th Cong., 2d sess. (2000).

According to Mr. Linehan, there is no incentive, legally or economically, for the OWCP to act in the "best interest" of the Federal employee. In reality, quite the opposite occurs. It is in the "best interest" of the OWCP and the employing Federal agency to delay, stall or deny claims because such non-action saves the OWCP from claims payments.

In effect, Mr. Linehan stated, this lack of accountability by the OWCP has directly led to the rapidly growing refusal of qualified medical practitioners across the United States to medically treat injured or diseased Federal civilian employees. The OWCP mandates that it must pre-approve and authorize medical treatment, however, the OWCP is under no timeline requiring it to issue such approval and authorization for medical treatment. The injured Federal worker who needs immediate medical treatment must first find a physician who will treat him or her. But physicians are highly reluctant to accept the cases because they are aware that they may not be paid for months, years, or at all by the OWCP.

In addition, Mr. Linehan stated that there are less than a handful of practicing attorneys across the United States who will represent Federal civilian employees in their workers' compensation claims because there is no court review. "No review means no payment," he said.

Without accountability, Mr. Linehan stated, the OWCP is free to act in any manner it desires toward an injured Federal civilian employee. The OWCP is free to refuse to respond to claimants' telephone calls; free to refuse to acknowledge receipt of correspondence or medical records from claimants or their physicians; and is free to delay or wrongfully deny due compensation benefits to the claimant.

D. POOR CUSTOMER SERVICE AT THE OWCP

One of the leading complaints among all of the claimants, union representatives, physicians and attorneys, including those who have testified before the subcommittee, was their inability to contact a representative at the OWCP to obtain information regarding the status of their claim or obtaining authorization for medical treatment.

Similar complaints have been stated in hundreds of letters received by the subcommittee as well as in hearing testimony. At the subcommittee's hearing on May 18, 1999, for example, Ms. Beth Balen, administrator of the Anchorage Fracture and Orthopedic Clinic in Anchorage, AK, testified:

> When calling the USDL [United States Department of Labor], it is not possible to call and speak to a person. The caller punches numbers and leaves a message. The message process that must be followed to get information or leave a message for a call back is very long, and there is no way to bypass the message (such as pushing "0" for an operator) and reach a person. Recent experience has shown an improvement in the timeliness of call-backs, but the process is frustrating, particularly when a doctor is waiting for information, or a patient is in the office, waiting for help.

Also at the May 18, 1999, subcommittee hearing, Mr. John Riordan, first vice president of the American Federation of Government Employees [AFL–CIO], which represents approximately 25,000 Social Security Administration employees, gave the following testimony regarding the OWCP's telephone policy in the New York district office:

> I encounter difficulties contacting agents because of the voice mail system. You are no longer able to speak with an agent. Instead, I have to leave voice-recorded messages. When I receive no response, I have to write to them even though I work in the same building where they are located. They imposed a strict policy restricting visitors to their offices a couple of years ago.

Despite efforts at the OWCP to upgrade its telephone systems over the last 5 years, an October 3, 2000, report by the General Accounting Office [GAO] confirmed that it is extremely difficult to reach employees at most of the OWCP's district offices by telephone.[15] Between January and September 2000, the GAO placed 2,400 telephone calls to OWCP's 12 district offices, attempting to obtain the same type of information an injured Federal worker might request. To compare the OWCP's goals and practices for telephone communication with those of model organizations, the GAO also surveyed three agencies that have won awards for their telephone communication practices: the Social Security Administration, the Department of Veterans Affairs' Benefits Administration and the State of Ohio's Bureau of Workers' Compensation.

To evaluate these systems, the GAO used criteria suggested by the National Partnership for Reinventing Government, which was based on an extensive study of high-performance customer service organizations in the private sector and their best practices for providing telephone service.

These criteria suggest, for example, the following telephone service goals:

- 99 percent of callers can access the telephone system;
- 98 percent of callers reach a customer service representative; and the time waiting on line be no more than 30 seconds; and
- 85 percent of callers' inquiries should be resolved during the first call.

The GAO found that the Social Security Administration, Department of Veterans Affairs' Benefits Administration and Ohio's Bureau of Workers' Compensation varied in whether they established goals for these measures. All three had goals for telephone access, two had goals for the portion of callers reaching representatives and the time they must wait on-line, and one had a goal of resolving inquiries on the first call.

The OWCP had set no goals that conform with the three NPR-suggested goals. The OWCP did, however, have a goal of returning 90 percent of phone calls to those who left messages not related to medical authorizations. The OWCP also had a separate goal in fiscal year 1999 of returning 95 percent of the calls related to medical authorizations within 3 days.

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[15] U.S. General Accounting Office testimony, "Office of Workers' Compensation Programs: Goals and Monitoring Are Needed to Further Improve Customer Communications," GAO–01–72T, Oct. 3, 2000.

However, GAO surveyors found wide differences in their ability to access the telephone systems at the OWCP district offices, much less obtain information. These failed attempts—which occurred because of busy signals, no answer after 1 minute, or a message erroneously stating that the phone number was invalid—ranged from the lowest, zero percent of the calls at the Boston (MA) district office, to the highest rate of failed calls, 54 percent, at the Jacksonville (FL) district office. Surveyors made an average of 200 calls per office.

The reasons given for these failures also varied. In Jacksonville, surveyors frequently experienced busy signals because district officials said that they believe it is better for a customer to receive a busy signal than to remain on hold for an extended period of time at the caller's expense. In San Francisco, surveyors were unable to access the phone system approximately 40 percent of the time; the District Director told the GAO that the problem was caused by a flaw in the phone system that had existed for years. She said that although customers hear the phone ringing, the system does not recognize that someone is calling. She said that she had spoken with officials from the phone company and communications officials at the Department of Labor, but the problem remained unresolved. The OWCP's Acting Director told the GAO that the San Francisco telephone problem had been resolved as of September 13, 2000, and that a July purchase of eight additional telephone lines would increase the system's accessibility.

The GAO telephone survey also confirmed the difficulty in attempting to speak to an OWCP representative at most district offices. Surveyors found that the percentage of times they were unable to reach any district employee within 5 minutes varied from 13 percent of the time at the Cleveland office to 97 percent of the time at the Jacksonville district office. OWCP employees could not be contacted in 86 percent of the calls to the Dallas district office, and in 80 percent of the calls to the New York district office. The most frequent reasons why GAO surveyors failed to reach an OWCP employee were that they were still receiving a busy signal or no answer after 15 rings; they were transferred to a voice mail box after selecting the option to speak to a representative; they were still on hold 5 minutes after selecting an option to speak to an employee; or they were disconnected after selecting an option to speak to an employee.

Officials at five district offices visited by the GAO said they had too few employees to answer the phones, adjudicate claims and perform the other services they must provide. Some offices, such as Dallas, uses e-mail for medical authorizations, congressional contacts, and general inquiries. In addition, the national office and four district offices are taking steps to provide customers information on the Internet.

The National Partnership for Reinventing Government estimates that organizations that answer a caller's question on the first call will spend less time and about half the resources as organizations that take multiple calls to answer inquires. According to the GAO, OWCP Acting Director Shelby Hallmark recognizes the benefits of answering the initial calls. He said that an ongoing program to make more claimant information available to district office computer terminals could help achieve that goal. But he also said that

establishing such a goal would be more appropriate for an organization with a call center and a staff whose sole responsibility is answering telephone calls. Instead, Mr. Hallmark told the GAO that OWCP district offices, which have other responsibilities, receive the calls and many prefer to direct them to voice mail and respond at a later time.

The GAO noted that the OWCP's budget request for fiscal year 2001 requested funding for a toll-free telephone number for medical authorizations, telephone system hardware upgrades, additional communications specialists, and expanded access to automated information for injured workers.

The telephone system, however, was only part of the overall communications problem for a witness at the subcommittee's May 18, 1999, hearing. OWCP claimant Thomas Mike Chamberlin, a former FBI special agent, was one of the few witnesses who successfully contacted an OWCP official by phone, but the result was equally unsatisfactory. In attempting to resolve conflicting information from OWCP representatives, Mr. Chamberlin faxed a question asking about his right to reconsideration, along with the appropriate legal citation, to the OWCP's Director and Assistant Director Sheila Williams.

According to Mr. Chamberlin's testimony, he later called and spoke to Ms. Williams. The OWCP Assistant Director told Mr. Chamberlin that she would have to do some research before she could answer his question. Further, because of her travel schedule, it would take her a few weeks before she could call him back with the information. "She never returned the call," Mr. Chamberlin said.

During the subcommittee's September 21, 2000, hearing the OWCP Acting Inspector General, Patricia Dalton, acknowledged that the department has a communications problem, but attributed it to the clarity of communication rather than access to department employees. Ms. Dalton stated, "I think there's a lot of confusion, we speak in Government jargon as opposed to plain English. . . . I think the department needs to do a better job of explaining where we are in a process, what's going on, what people can expect, what do they need to do."

VII. Final Recommendations

Based upon the records developed by the Subcommittee on Government Management, Information, and Technology during its oversight process, including correspondence with hundreds of injured Federal workers, the committee makes the following recommendations.

A. Provisions of the Federal Employees' Compensation Act should be enforced, specifically those provisions dealing with employers who interfere with an employee's legitimate claim for compensation due to a work-related injury or illness.

B. Provisions in the Federal Employees' Compensation Act must be clarified to require a third opinion by a qualified physician when an employee's attending physician and an OWCP physician disagree on the diagnosis and prognosis of a work-related injury or disease.

C. The Division of Federal Employees' Compensation within the Department of Labor should make every effort to provide telephone

access to FECA claimants, their representatives and medical providers. This effort should include a centralized communications center.

D. While timeframes must be set for claim resolutions, they must not be at the expense of a quality, well-thought-out decision.

E. Congress should consider establishing an independent board, such as the board overseeing ongoing reforms at the Internal Revenue Service, to review, recommend, and oversee reforms at the Office of Workers' Compensation Programs. This board should also consider and recommend to Congress whether appeals by Federal workers under the Office of Workers' Compensation Programs should be extended to include the Federal court system.

APPENDIX

SUBCOMMITTEE ON GOVERNMENT MANAGEMENT, INFORMATION, AND TECHNOLOGY, OF THE COMMITTEE ON GOVERNMENT REFORM

Hearings on the Office of Workers' Compensation Programs (1998 to 2000)

"Management Practices at the Office of Workers' Compensation Programs," July 6, 1998, Long Beach, CA

Witnesses:

Joseph Perez, hearing representative, Office of Workers' Compensation Programs;

William Usher, hearing representative, Office of Workers' Compensation Programs;

Sammy Lopez, supply technician, Veterans Administration;

Howard Miyashiro, letter carrier, U.S. Postal Service;

Anthony Burelli, marine electrician, Long Beach Naval Shipyard;

Roger Euchler, letter carrier, U.S. Postal Service;

Susan Yake, dietitian, U.S. Naval Hospital, Bremerton, WA;

Rachael Santos, postal manager, U.S. Postal Service;

Joseph Jackson, Mailhandlers' union compensation coordinator;

Michael Kerr, Deputy Assistant Secretary, Director, Office of Workers' Compensation Programs, accompanied by Shelby Hallmark, Deputy Director, Office of Workers' Compensation Programs; and,

Donna Onodera, Director, San Francisco Regional Office, Office of Workers' Compensation Programs.

"Oversight of Customer Service at the Office of Workers' Compensation Programs," May 18, 1999, Washington, DC

Witnesses:

Thomas Mike Chamberlin, former Special Agent, Federal Bureau of Investigation;

Dianne McGuinness, former employee of the Social Security Administration;

Matthew Fairbanks, Special Agent/Pilot, Drug Enforcement Agency;

Beth Balen, administrator, Anchorage Fracture and Orthopedic Clinic;

John Riordan, first vice-president, Council 220, American Federation of Government Employees;

James R. Linehan, attorney, Edmond, OK;

Tina Maggio, field representative, Office of Representative Michael F. Doyle;

Patricia Dalton, Deputy Inspector General, Office of Inspector General, Department of Labor, accompanied by Amy Friedlander, Evaluations and Inspections, Office of Inspector General; and

Shelby Hallmark, Deputy Director, Office of Workers' Compensation Programs, Department of Labor, accompanied by Sharon Tyler, District Director, San Francisco Regional Office.

"Federal Workers' Compensation Program: Are Injured Federal Workers Being Treated Fairly?," September 21, 2000, Washington, DC

Witnesses:

Reginald Sydnor, former attorney, U.S. Equal Employment Opportunity Commission;

C.B. Weiser, attorney, Weiser Law Offices (Marshall, TX);

Greg Fox, Office of Workers Compensation Programs representative, American Federation of Government Employees;

Michael Walsh, chairman, Employee Compensation Appeals Board, U.S. Department of Labor;

Shelby Hallmark, Acting Director, Office of Workers' Compensation Programs, U.S. Department of Labor; and,

Patricia Dalton, Acting Inspector General, U.S. Department of Labor.

ADDITIONAL VIEWS OF HON. HENRY A. WAXMAN, HON. JIM TURNER, HON. TOM LANTOS, HON. MAJOR R. OWENS, HON. EDOLPHUS TOWNS, HON. CAROLYN B. MALONEY, HON. ELEANOR HOLMES NORTON, HON. CHAKA FATTAH, HON. ELIJAH E. CUMMINGS, HON. DENNIS J. KUCINICH, HON. ROD R. BLAGOJEVICH, HON. DANNY K. DAVIS, HON. JOHN F. TIERNEY, HON. HAROLD E. FORD, JR., AND HON. JANICE D. SCHAKOWSKY

I. INTRODUCTION

We commend the majority's efforts to highlight the importance of administering the provisions of the Federal Employees' Compensation Act [FECA] in a just and fair manner, and we agree that many of the report's findings and recommendations are valid. The record before the committee indicates that Office of Workers' Compensation Programs [OWCP] should improve its communications problems and customer services.

However, the majority report, in some instances, lacks balance. It does not adequately acknowledge the progress the OWCP has made to date or the ongoing efforts by the OWCP to improve its programs. Nor does the report sufficiently document many of its recommendations. Additionally, the minority recommends that the Employees' Compensation Appeals Board [ECAB] ensure that the appellants' files are complete before docketing them.

II. PROGRESS IS BEING MADE

While we acknowledge that there are injured Federal employees who have not received satisfactory treatment in the adjudication of their claims, the OWCP has done a generally sound job. For example, of the roughly 170,000 injuries reported to the OWCP each year, the majority are approved without delay, most being approved for payment of medical bills immediately upon OWCP's receipt of the notice of the injury from the employing agency.[1] More than 89 percent of all claims are approved on initial adjudication.[2] The percentage is higher, 93 percent, for traumatic injury claims, which are generally more straightforward than occupational disease claims.[3]

Additionally, the OWCP has made some improvement on the timeliness of decisions. The OWCP has an adjudication goal of 45 days for traumatic injuries, 90 days for simple occupational disease, and 184 days for extended occupational disease.[4] For cases

[1] Testimony of Shelby Hallmark, House Committee on Government Reform, Subcommittee on Government Management, Information, and Technology, hearing on "Federal Workers Compensation Program: Are Injured Federal Workers Being Treated Fairly?" (Sept. 21, 2000).
[2] Id.
[3] Id.
[4] Id.

that went before the ECAB in fiscal year 1998, the average time to issue a decision on the merits of appeal following an oral hearing was 361 days.[5] That time has been reduced to 277 days in fiscal year 1999, and it is presently down to 242 days.[6] With increased staff and more sophisticated automated support, the backlog of cases pending with ECAB has been reduced by 26 percent over the last 2 years.[7]

III. Response to Recommendations

We submit the following additional views to the majority's recommendations.

- *Majority Recommendation A: Provisions of the Federal Employees' Compensation Act should be enforced, specifically those provisions dealing with employers who interfere with an employee's legitimate claim for compensation due to a work-related injury or illness.*

The minority concurs that *all* provisions of FECA should be strictly enforced. Claimants deserve a quick and thorough review of their case under the applicable statutes and regulations. However, while we agree with this recommendation, the majority report has not shown sufficient documentation to support the allegation that the provisions of FECA are not being enforced. For example, the majority report cites the case of Sammy Lopez, whose claim was prejudiced by the actions of the employing agency. According to Shelby Hallmark, Acting Director of the OWCP, "we are not guided by agency activity, and we do as best we can to shield our claims examiners from being hounded, if you will, as has been suggested here. I don't believe that our claims examiners in the district offices feel that they must reach a particular result. And I'm not aware of agencies attempting to pressure, or they certainly don't attempt to pressure me to come up with a result of one kind of another on a case."[8] Other than Mr. Lopez's example, we are not given any statistical evidence to support the allegation that interference by employers is a common practice.

- *Majority Recommendation B: Provisions in the Federal Employees' Compensation Act must be clarified to require a third opinion by a qualified physician when an employee's attending physician and an OWCP physician disagree on the diagnosis and prognosis of a work-related injury or disease.*

While we believe that the claimant should have every opportunity to present his or her case, the report has provided insufficient evidence to support this recommendation. We do not know, based upon the report, whether a third opinion is always necessary or prudent from a medical or legal standpoint. The current policy followed by the OWCP allows claims examiners to weigh the evidence presented by the two physicians to determine if it is truly in conflict, or if one opinion takes precedence. The OWCP has stated that the policy of holding that a medical conflict does not exist sim-

[5] Id.
[6] Id.
[7] Id.
[8] Id.

ply because two physicians disagree is consistent with the approach taken by administrators of other benefit programs such as the Social Security Administration.[9]

In some cases, the requirement that every disagreement merit a third party opinion, even when not necessary, could result in a costly, time consuming burden for the OWCP and the claimants that would not necessarily result in a better system. The majority report uses one example, involving Joseph Perez, to imply that such a recommendation is warranted as whole. We are not given any other cases, statistical evidence, or legal opinions which would support the recommendation that would require an automatic third opinion if a disagreement exists.

While we always support a claimant's right to a third opinion when merited, we reserve judgment on the majority report's recommendation until more evidence is presented. Additionally, the current law regarding the requirement of a third opinion should be clarified so as to avoid confusion in future claims adjudications.

- *Majority Recommendation C: The Division of Federal Employees' Compensation within the Department of Labor should make every effort to provide telephone access to FECA claimants, their representatives, and medical providers. This effort should include a centralized communications center.*

The minority strongly agrees that every effort should be made to provide telephone access to FECA claimants. However, the OWCP also agrees, and has already initiated a wide range of efforts in this regard, including a $5.7 million budget request for fiscal year 2001 to fund, among other things, a centralized call center.[10] The problem is that Congress has not accepted this request. Among other things, the requested increase would provide: a national call center, installation of "800" telephone lines for medical authorizations, a review of each district office by a communication specialist, and telephone system hardware upgrades.

- *Majority Recommendation D: While timeframes must be set for claim resolutions, they must not be at the expense of quality, well-thought-out decisions.*

The minority strongly agrees that the OWCP should not sacrifice quality decisions in order to meet deadlines. Such a policy would be detrimental to claimants who have legitimate cases which may, due to the difficult nature of their claim, take longer to process. Additionally, the failure to thoroughly consider a decision would be contrary to the policy of FECA, which is to provide Federal employees who are injured on the job with a sure benefit recovery without the necessity of litigation. However, the report has failed to adequately document that the OWCP is currently issuing decisions based on a deadline rather than a just and thoughtful review. In fact, the majority report states that many claimants are subject to unnecessary delays, often having to wait months and years for each adjudication process of their claims.

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[9] Letter from Shelby Hallmark, Deputy Director, Office of Workers' Compensation Programs, to Representative Jim Turner (July 26, 2000).

[10] Testimony of Shelby Hallmark, supra n. 1.

- *Majority Recommendation E: Congress should consider establishing an independent board, such as the board overseeing ongoing reforms at the Internal Revenue Service, to review, recommend, and oversee reforms at the Office of Workers' Compensation Programs. This board should also consider and recommend to Congress whether appeals by Federal workers under the Office of Workers' Compensation Programs should be extended to include the Federal court system.*

We acknowledge that Congress should exercise its oversight role on the OWCP and work to reform any problems that are preventing injured Federal workers from receiving a fair and just review of their claims. Additionally, Congress should consider any legislation that might help achieve the goal of providing a quality program. However, we are not convinced that an additional board would be a wise use of taxpayer funds. Congress is already endowed with the power to hold hearings, gather information, and enact legislative measures to reform the OWCP. Congress should not look to a board as a substitute for responsibilities that it is already equipped to handle. Furthermore, a board might be unnecessary, unduly burdensome, and actually serve to delay an attempt by Congress to enact reform.

IV. MINORITY RECOMMENDATION

In addition to the recommendations in the majority report that we support, we also recommend that to ensure that an appellant's case is not remanded due to ministerial deficiencies, the ECAB have a screening process in place to ensure that files sent from the OWCP for appeal are complete before docketing the case.

During the hearing before the Government Management, Information, and Technology Subcommittee on September 21, 2000, we were presented with two examples in which an appellant's case was remanded due to an incomplete file. Clete Weiser, an attorney from Texas who handles OWCP cases, discussed the case of John Bright in which the ECAB waited approximately 23 months to require the appellant to provide proof that she was the executrix of her husband's estate.[11] Regarding the John Bright case, Mr. Weiser stated that a review of the file to identify missing documents was "not being done until the 23rd month. And that's unconscionable, in my view, for an administrative office to do that."[12]

Additionally, Mr. Weiser discussed the case of Dan Gregg, who appealed his case to the ECAB on May 30, 1998. After holding the case for approximately 23 months, the ECAB issued an order remanding the case to the OWCP District Office in Chicago, IL, to issue a decision on the basis that the OWCP District Office had not provided the appellant's file to the ECAB. Upon remand, the District Office reissued its decision denying the appellant's claim which was promptly appealed to the ECAB on May 22, 2000. The ECAB has advised that it will not issue a decision in the appellant's case for another 24 months.[13] Representative Jim Turner (D–

[11] Testimony of C.B. Weiser, House Committee on Government Reform, Subcommittee on Government Management, Information, and Technology, hearing on "Federal Workers' Compensation Program: Are Injured Federal Employees Being Treated Fairly?" (Sept. 21, 2000).
[12] Id.
[13] Id.

TX) stated that "the reason for its remand was the fact that the file wasn't complete, which seems to me to be a ministerial matter, it should have been determined within at least 30 to 60 days and corrected." [14] Mr. Michael J. Walsh, the chairman of ECAB, agreed, and went on to state "[i]f in fact they can't get it to us, then the only thing that we have available to us is what we call kind of an order to show cause, we say, get the case to us in 30 days, or we'll have to remand it for reconstruction." [15] In response, Mr. Weiser stated, "I find it hard to believe that you cannot determine within the first 30, 60, or 90 days of receiving an appeal, you cannot determine that you either have or do not have a file from the OWCP district office. In at least the cases I've had, action is not being done." [16] According to Mr. Weiser, "You shouldn't have to wait 23 months to find out that, gee, you don't have the case file. And then the case is remanded, and when it goes back up, now you have another 24 months." [17]

Based upon the testimony at the hearing, it appears that no system is in place to screen the appellants' files to ensure that they are complete before scheduling them for hearing. In the event that the files are found incomplete or missing, they are remanded back to the OWCP and required to have another decision before they can be appealed before the ECAB. The minority believes that the OWCP and the ECAB should ensure that the necessary documentation is complete before docketing the file. Injured Federal workers deserve a timely hearing, and we believe that it is wrong to remand a case from the ECAB back to the OWCP and request another decision due to a ministerial matter.

HON. HENRY A. WAXMAN.
HON. JIM TURNER.
HON. TOM LANTOS.
HON. MAJOR R. OWENS.
HON. EDOLPHUS TOWNS.
HON. CAROLYN B. MALONEY.
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[14] Testimony of Representative Jim Turner, House Committee on Government Reform, Subcommittee on Government Management, Information, and Technology, hearing on "Federal Workers' Compensation Program: Are Injured Federal Employees Being Treated Fairly?" (Sept. 21, 2000).

[15] Testimony of Michael J. Walsh, House Committee on Government Reform, Subcommittee on Government Management, Information, and Technology, hearing on "Federal Worker's Compensation Program: Are Injured Federal Workers Being Treated Fairly?" (Sept. 21, 2000).

[16] Testimony of C.B. Weiser, supra n. 11.

[17] Id.